

to this application. The only objection has been taken by the Bar Council. A sustained argument was addressed to this court to the effect that the application is misconceived on the principal ground that no special grounds exist to justify the application in terms. The Bar Council seems to think that academic attainment is no passport to favour.

The petitioner is a Malaysian citizen. He was conferred and admitted to the degree of Bachelor of Laws of the University of Singapore in 1966. He took his Master of Laws degree at the Harvard Law School in the United States in 1967. He was awarded a scholarship to study for the degree of Doctor of Laws of that University, which I am made to understand he expects to complete soon. While in the United States he was employed as a law associate by Messrs. Ropes & Gray, the largest law firm in New England, for a period of slightly over three months. He has received instructions and gained experience in branches of the English common law, in particular contract and tort, constitutional law, drafting of pleadings, agreements and forms, professional practice and etiquette. His employer was highly impressed with his practical work. He returned in 1968 and was appointed lecturer at the Faculty of Law, University of Singapore for nearly two academic years. During this period he has obtained a sound understanding of our law and our legal system. He has given instructions to undergraduate law students, preparing them for the practice of law in Malaysia and Singapore, in branches of the law of tort, some civil procedure and contract law, moots, Malaysian and Singaporean courts and legal systems and international law. He resigned in January 1970. Since February 1970 the petitioner has been attending the office of Mr. D. L. Pickard, a practising advocate and solicitor of not less than 7 years' standing in Messrs. Donaldson & Burkinshaw, Kuala Lumpur.

In the light of his excellent academic background it cannot be said that he is without knowledge and experience. I therefore ask the pertinent question whether he possesses such knowledge and experience that it is in the public interest he should be allowed to practise without serving the full period of pupillage. The petitioner has satisfactorily completed a post-graduate course of instruction organised by the University of Malaya, from 14th March, 1966 to 4th June, 1966 within the meaning of the proviso to subsection (3) of section 5 of the Advocates and Solicitors Ordinance 1947 and was awarded a certificate. The provisions of sections 7(1) and 8 have also been complied with. The words of section 5(5) are very strong and comprehensive and it certainly is a right doctrine to apply to the consideration of the section that unless special grounds exist, application for shortening of the period of reading in chambers and/or shortening of the notices of application must not be allowed. Be that as it may, section 5(5) of the Ordinance gives the court an unfettered discretion in the matter provided special grounds exist. What are special grounds is a question far too difficult to be capable of abstract definition: when concrete cases arise, one could only see for himself whether such grounds exist. I am therefore content here to apply myself to the facts of this case.

A It is said on behalf of the Bar Council that the short spell the petitioner has had with the American law firm does not give him the practical knowledge and experience of the law because American law is far too different from ours. It must not be forgotten that the American colonists took with them the common law to the new country and any substantial difference between their law and the common law is because they consider that the old common law system is no longer efficacious in a changing society. It is the practice with our courts to refer to Commonwealth and American decisions in an attempt to see whether their legal systems have anything which we might usefully adopt ourselves and the only way to improve is by looking at other people's law so that the correctness of any one decision which we may arrive at can be confirmed. I venture to say that the American legal system possesses fundamentally the same social objectives as ours and a practical knowledge and experience of their system is an asset.

D I have seriously considered this matter and I am satisfied and so hold that in the present case special grounds exist justifying me to allow the motion. I will therefore allow the motion in terms and admit the petitioner.

Petition granted.

NICHOLAS & ORS. v. GAN REALTY SDN. BHD. & ORS.

[F.C. (Azmi L.P., Ali F.J. & Syed Othman J.) April 24, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 59
of 1969]

Practice and Procedure — Injunction — Temporary injunction — Same as interlocutory injunction under English law — Preservation of property in its actual condition until legal title can be established — No determination of legal rights — Enough to show that there is a fair question as to the existence of rights — R.S.C. 1957, O.50 r.1 — Specific Relief (Malay States) Ordinance, 1950, ss. 50 et. seq.

Companies — Shares — Offer to public — Restrictions — Companies Act, 1965, s. 363(3).

H In this case the respondents had brought an action for specific performance of an agreement for the sales by the first five appellants (the vendors) of 10,200 shares of \$100 each issued and fully paid up or at least 51% of all such shares issued in the Oriental Bank of Malaya Bhd. (the 6th appellant) at the price of \$160 a share. They also ask for an injunction restraining the vendors from parting with or disposing of the said shares. At the same time the respondents applied *ex parte* for an injunction restraining the vendors from parting with or disposing of any of the shares and also an injunction restraining the bank from registering the transfers of any such shares to persons other than the respondents. Gill J. (as he then was) who heard the application granted an *interim* injunction. Subsequently the appellant applied to the court for an order that the order made *ex parte* before Gill J. be discharged. Raja Azlan Shah J. ([1969] 2 M.L.J. 110) rejected the application on the ground that the appellants had not satisfied him that the facts upon which the injunction was granted no longer existed. On appeal it was alleged: (a) even on the facts and pleadings disclosed by the respondents no legal contract had been disclosed by the respondents; (b) if such contract had been concluded it could not be specifically enforced under the provisions of the Specific Relief (Malay States) Ordinance, 1950; and (c)

the contract was illegal as an offence under section 363(3) of the Companies Act, 1965, had been committed as there had been an offer of shares to the public.

Held, dismissing the appeal: (1) the facts disclosed that there was a probability of an agreement having been concluded between the parties;

(2) a temporary injunction under section 50 of the Specific Relief (Malay States) Ordinance, 1950, like an interlocutory injunction in England, may be granted where the court is satisfied that there is a substantial question to be tried and until the case is tried, a case has been made out for the preservation of the property in the meantime in *status quo*;

(3) it was not obvious on the facts disclosed that an offence under section 363(3) of the Companies Act, 1965, had been committed in that there had been an offer to the public.

Cases referred to:-

- (1) *Vethanayagam v. Karuppiyah & Ors.* [1968] 1 M.L.J. 283 at p. 284.
- (2) *Chaplin v. Barnett* (1912) 28 T.L.R. 256.
- (3) *Booth v. New Afrikander Gold Mining Co. Ltd.* [1903] 1 Ch. 295.

FEDERAL COURT.

R. Chelliah (V. K. Palasuntharam and Moorthy with him) for the appellants.

K. S. Chung (Loh Yoon Kwai with him) for the respondent.

Azmi L.P.: This is an appeal against the judgment of the High Court at Kuala Lumpur refusing to dissolve an order of injunction made previously on an *ex parte* application before another judge of the same court against the defendants restraining them from parting with or disposing of any of their shares in the Oriental Bank of Malaya and restraining the bank from registering the transfer of any of the said shares to any other persons than to the plaintiffs. In the course of this judgment I may where the context permits refer to defendants one to five as the "vendors" and the sixth defendant as "the bank."

On 4th June 1968, the plaintiffs filed a specially indorsed writ accompanied by a statement of claim against the 6 defendants for specific performance of an agreement dated 4th May, 1968 which they say is for the sale by the vendors to the plaintiffs of 10,200 shares of \$100 each issued and fully paid up or at least 51% of all such shares issued in the bank at the price of \$160 a share. They also asked for an injunction restraining the vendors from parting with or disposing of any of the said shares, otherwise than to the plaintiffs, and also an injunction as against the bank restraining it from registering the transfer of the said shares to any other person than the plaintiffs. The third plaintiff also claims the sum of \$102,000 against the vendors as loss of commission.

About the same time the plaintiffs by *ex parte* motion applied to the court for an injunction restraining the vendors from parting with or disposing of any of the shares and also an injunction against the bank from registering the transfer of any such shares to persons other than the plaintiffs.

In support of their application for the *interim* injunction before Gill J., as he then was, the first defendant filed an affidavit in which he alleged that by an

agreement dated 4th May 1968 reduced to writing on 5th May 1968, between the plaintiffs and the vendors whereby it was agreed that the vendors will sell and the plaintiffs will purchase not less than 51% and not more than 70% of all the shares issued and paid up in the said bank at \$160 a share. The said document was annexed to the affidavit. It is dated 5th May 1969 and purported to have been written by Mr. Lim Sun Hoe to Messrs. Skrine & Co. advocates and solicitors. In it, was referred a discussion made between Mr. Peddie of Skrine & Co., and Mr. Lim. Mr. Lim sets out what he called the "terms and conditions covering an offer and acceptance as agreed" and may be described briefly as follows:—

The vendors will sell to the plaintiffs at least 51% of the issued and paid up shares in the said bank at \$160 per share. It then refers to an effort which the vendors would make to obtain additional 19% of the shares to be made available to the plaintiffs at the same price and the plaintiffs therefore have committed to purchase from the vendors a total of 70% of the shares. The vendors are requested to inform Mr. Lim not later than 5 p.m. on Tuesday, 7th May of the actual number of shares available.

It could be at this stage of the proceedings that the plaintiffs were under the impression that the vendors had at that time at their disposal 51% of the shares because there was a reference to the fact that the vendors would try to obtain additional 19% of the shares to make up the 70%. The document then goes on to say how the shares are to be paid. In my opinion it is not necessary to give the details here. The document then says that as soon as the plaintiffs become the majority shareholders of the bank they will make necessary arrangements to compensate the bank's secretary and to transfer certain houses belonging to the bank to the vendors. The rest of the terms and conditions refer to loans made by the bank, bad debts of the bank and so on. In other words the document deals in some details with what they have agreed to do after the sale of the shares and after the plaintiffs have become the majority shareholders.

Paragraph 8 of the document states that a sale and purchase agreement will be drawn forthwith to incorporate this offer and the acceptance and its terms and that such agreement to be effective and binding upon the parties if approved by Bank Negara. In the event of Bank Negara imposing any terms or conditions or modifying the terms in any material manner, both parties agree to abide by such terms, conditions or modifications, save that the plaintiffs may rescind the agreement on the happening of any of the events named, if the Bank Negara increases the price of the shares or does not approve of the plaintiffs acquiring 51% of the total issued capital or that it objects to plaintiffs or any of them or the directors nominated by the plaintiffs and so on. There is a proviso to the above namely that both parties shall not be bound by the "sale and purchase agreement" should it be rejected in its entirety by Bank Negara. It further provides that should the plaintiffs rescind the "sale and purchase agreement" or should Bank Negara reject it *in toto* then any monies paid to Skrine & Co. as stake holders shall be returned to the plaintiffs. Finally the letter requests the terms and offer of acceptance outlined above to be confirmed as correct.

The third plaintiff's affidavit also exhibited a letter dated 9th May from Messrs. Skrine & Co. which reads as follows:—

"We refer to your letter of 8th instant and regret to state that our clients have ascertained that they are no longer able to obtain for your clients the 51% of the shares of the bank which was a necessary pre-condition of the sale. Our clients no longer control the necessary percentage."

Also exhibited was a letter from the Registrar of Companies to the effect that the 6th defendant is registered and incorporated under the Companies Enactment and that the company is limited.

There is a letter from the manager of the Stock Exchange of Malaysia and Singapore to the effect that the bank is not a company on the official list of the stock exchange and therefore not dealt with in the open market through the trading rooms of the stock exchange.

A letter from the Pendaftar Sharikat2 Malaysia to the effect that the five vendors together hold 6,979 shares of the bank is also exhibited.

Gill J., as he then was, who heard the *ex parte* application granted the application in the following terms:—

"Order for an *interim* injunction as prayed. Defendants to be served with the order together with the writ and they are given liberty to apply to have the order set aside within 14 days of the service of the writ and statement of claim and order. Costs to be costs in the cause."

The order of the court was served together with the writ and statement of claim on the first, fourth, fifth and sixth defendants on 10th June 1968, on the second defendants on 13th June 1968 on the third defendant on 14th June 1968.

The perfected order made out of Gill J.'s judgment and extracted by the plaintiff's solicitors is unfortunately wrong in one important matter, in that, instead of stating that the defendants are at liberty to apply to have the order of injunction granted, discharged within 14 days of the said order and writs etc., states that they may do so after the expiry of 14 days of the service of the said order.

On 17th July 1968, the plaintiffs applied to the court for an order that they are at liberty to serve on the vendors interrogatories in writing. I do not propose to refer to the interrogatories in detail but I might say this much. In answer to an interrogatory whether the five defendants or any or more of them instructed Mr. Peddie of Messrs. Skrine & Co. to act for them in this matter, the defence merely said "No". They denied that any of them gave any instructions to Mr. Peddie. They also denied that Mr. Peddie had any discussions or negotiations on their behalf with Mr. Lim Sun Hoe. To the question whether the said Mr. Peddie on their behalf offered for sale to Mr. Lim all the shares registered in their names and further shares amounting to not less than 51% and not more than 70% of the total issued shares of the said bank their reply is just "No". They also said "No" to the question whether the plaintiffs accepted the said offer for the same said sale. To the question whether Mr. Lim Sun Hoe wrote to Mr. Peddie on 5th May concerning a discussion relating to the offer of the sale of the said shares by the vendors and acceptance by the plaintiffs of the said offer the answer was "No."

They were then asked whether Messrs. Skrine & Co. by letter of 7th May on their behalf acknowledged receipt of the said letter of 5th May referred to previously to the effect that it confirmed that the letter of 5th May substantially sets out what had been agreed between them but that there may be some points for further clarifications and discussions and so on. To this their answer is "No." There are several other

interrogatories dealing with the matter and to every such interrogatory asked the answer was the same.

It was apparent therefore at that stage the vendors were advised to deny everything that the plaintiffs had said had taken place between their solicitors Mr. Lim Sun Hoe and Mr. Peddie of Skrine & Co. This is the stand taken by the defendants up to filing of the statement of defence. They merely denied but disclosed nothing.

If I may continue with the narrative of events. On 28th December 1968 the defendants applied to the court for an order that the order made *ex parte* before Gill J. be discharged. The matter came before Raja Azlan Shah J. The learned judge dismissed the application. Before him it was argued that the temporary injunction made by Gill J. was wrongly granted. In support the judgment of Raja Azlan Shah J. in *Vethanayagam v. Karupiah & Others*⁽¹⁾ was cited. It was also submitted that the alleged contract (which was denied) cannot be specifically enforced and therefore *interim* injunction does not lie. Counsel relied on section 20(a), (b), (c) and (d) of the Specific Relief (Malay States) Ordinance 1950 and the averment that the defendants no longer held the requisite number of shares. The learned judge however, felt doubtful of their application to the present proceedings. He, however, thought that such arguments should be made not before him then but on another occasion by which I understand that Mr. Chelliah's arguments for the defendants should be made at the trial. The learned judge went on to say that in order to dissolve or vary an *ex parte* injunction the defence must satisfy the facts upon which the injunction was granted no longer existed. He then expressed the view that since the shares in this bank are not available in the open market the matter could not be remedied by damages. His other reason for rejecting the defendants' application was that the defendants had been guilty of delay in that they had waited for 6½ months after the *ex parte* injunction was made before they took the present proceedings.

Before this court the judgment of the learned judge was attacked on several grounds. Our law on injunctions is given in section 50 *et seq* of the Specific Relief (Malay States) Ordinance 1950. Here injunctions are divided into two kinds, namely temporary and perpetual. Section 51 says that temporary injunctions are such as are to continue until a specific time or until the further order of the court and they may be granted to any party. They may be granted at any period of a suit and are regulated by the law relating to the civil procedure in force in the Malay States. The relevant law is now found in O. 50 of the Rules of the Supreme Court 1957. Rule 1 of the said Order reads as follows:—

"1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or *interim* custody of the subject matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured."

This rule extends to every case where the court sees as between plaintiff and the defendant there is

something which ought to be done for the security of the property. See *Chaplin v. Barnett*⁽²⁾.

Before us it was argued again for the defendants that first there was no contract concluded between the parties and if such contract had been concluded it could not be specifically enforced by virtue of certain provisions of the Specific Relief (Malay States) Ordinance and also that this contract was illegal. We are asked to consider the merits of the case.

It is my view that a temporary injunction under section 50 of the Specific Relief (Malay States) Ordinance is the same thing as an interlocutory injunction mentioned in the English text books. Temporary injunctions are such as are to continue until a specific time or the hearing of the case upon the merits or generally until further order.

Kerr on Injunctions 6th Edition at page 2 says this:

"The interlocutory injunction is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to keep matters in *status quo* until the hearing or further order. In interfering by interlocutory injunction, the court does not in general profess to anticipate the determination of the right, but merely gives it as its opinion that there is a substantial question to be tried and that till the question is ripe for trial, a case has been made out for the preservation of the property in the meantime in *status quo*. A man who comes to the court for an interlocutory injunction, is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges, and can satisfy the court that the property should be preserved in its present actual condition, until such question can be disposed of."

Again at page 15:—

"In exercising the jurisdiction, the court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition until the legal title can be established. The court interferes on the assumption that the party who seeks its interference has the legal right which he asserts, but needs the aid of the court for the protection of the property in question until the legal right can be ascertained. The office of the court to interfere being founded on the existence of the legal right, a man who seeks the aid of the court must be able to show a fair *prima facie* case in support of the title which he asserts. He is not required to make out a clear legal title, but he must satisfy the court that he has a fair question to raise as to the existence of the legal right which he sets up, and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent. The court must, before disturbing any man's legal right, or stripping him of any of the rights with which the law has clothed him, be satisfied that the probability is in favour of his case ultimately failing in the final issue of the suit. The mere existence of a doubt as to the plaintiff's right to the property, interference with which he seeks to restrain, does not of itself constitute a sufficient ground for refusing an injunction, though it is always a circumstance which calls for the attention of the court."

It was urged by the defendants before us that even on the pleadings and facts disclosed by the plaintiffs

A no legal contract was concluded between the parties. In my own view having gone through the facts carefully, it is not obviously so. On the contrary on the facts disclosed there is a probability of an agreement having been concluded by the parties.

B Counsel for the appellants also pointed out that an offence has also been committed in this case under section 363(3) of the Companies Act 1965. That sub-section reads:—

"A person shall not make an offer to the public or to any member of the public (not being a person whose ordinary business it is to buy or sell shares, whether as principal or agent,) of any shares for purchase."

C It is not clear from the facts of this case how the plaintiffs came to negotiate with the vendors for the sale of the shares. In my view the offence envisaged by sub-section (3) is the act of making an offer to the public or member of the public. It has been decided in *Booth v. New Afrikaner Gold Mining Co. Ltd.*,⁽³⁾ that the words "shares offered to the public" do not include shares offered by a promoter to a few of his friends, relations or customers. In my view therefore, it would not be so obvious as counsel seemed to think that in this case, an offence under the said sub-section (3) has been committed. I am by no means saying that when the full facts of the case are placed before the court, that such an offence has not been committed. Apart from that, as I understand the section, an offer made to a person whose ordinary business is to buy or sell shares whether as principal or agent, is not an offence under the sub-section. It is not very clear from the facts before us whether plaintiff No. 3 was such a person or not. In the circumstances I would dismiss the appeal with costs.

F Ali F.J.: I agree with the Lord President that this appeal be dismissed. Both counsel have argued this appeal with skill and ability. In the final analysis it must be stated here that in the circumstances of this case, so far as it is possible or permissible to form any opinion on the matter in dispute, the order granting the *interim* injunction was rightly made by Gill J. (as he then was). It was made in the exercise of a judicial discretion. Raja Azlan Shah J. refused to discharge the injunction upon consideration of the facts available before him. It may well be that the trial court will ultimately decide to dismiss the plaintiffs' action. But we are not to speculate on this. For the present we are of opinion that it is just and proper for the *interim* injunction to remain undischarged until the trial.

Syed Othman J. concurred.

Appeal dismissed.

Solicitors: P. S. Moorthy; Chung & Co.